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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,773	10/22/2003	Guilhem Rousselet	LOREAL 3.0-036	6962

530 7590 07/05/2006

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EXAMINER
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RUNNING, RACHEL A

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 07/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/690,773	<b>Applicant(s)</b> ROUSSELET, GUILHEM	
	<b>Examiner</b> Rachel A. Running	<b>Art Unit</b> 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

Examiner acknowledges that claims 1, 12, and 26 have been amended with new claim limitations, claims 1-28 are still pending.

The U.S.C 112 2<sup>nd</sup> paragraph rejection to claim 14 has been overcome; therefore the 112 2<sup>nd</sup> paragraph rejection has been withdrawn.

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 26 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Poupitch (U.S. Patent No. 3,924,738). Poupitch discloses a first item in the form of a receptacle (20) containing a first product, and a second item in the form of a receptacle containing a second product see Figure 4 (column 3, lines 12-15). A device having a first element (18) and a second element (18) the first and second items being held in a fixed relation to one another by the device see Figure 4 (column 2, lines 55-65). The first and second elements can attach to either the first item or the second item such that the first and second items may be adjacent to one another without substantially deforming the first and second items see Figure 4. The first and second items each have a circular cross-section see Figure 1.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 6-12, and 17-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Poupitch (U.S. Patent No. 3,924,738) in view of Edwards (U.S. Patent No. 2,949,204). Poupitch discloses a device comprising a first element (18) have a first side and a second side, and second element having a first side and a second side (18) detachably securable to a first item (20) and a second item (20). The first and second elements are adapted for flexibly squeezing the first and second item see Figure 3 (column 2, lines 63-70). A connecting element (28) is attached to the first element and the second element see Figure 4. The first and second elements are connected to the first item and the second item simultaneously see Figure 4. Regarding claims 6 and 17, the connecting element is a hinge (column 3, lines 30-35). Regarding claims 7 and 18, the connecting element is a flexible strip (column 4, lines 15-25). Regarding claims 8 and 19, the device is comprised of at least one moldable thermoplastic material (column 2, lines 63-65). Regarding claims 9 and 20, the device is configured such that it can move from an initial position in which the first and second elements are located side-by-side to a second position in which the first and second elements are located above one another see Figure 1-3. Regarding claim 10, the first

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and second elements have an internal circular cross-section see Figure 1. Regarding claim 11, the first and second elements are identical see Figure 1. Regarding claim 21, the first and second elements have internal cross-sections that correspond to the cross-sections of the first and second items see Figure 4 (column 2, lines 65-70). Regarding claim 22, the cross-sections of the first and second items and the internal cross-sections of the first and second elements are circular and have a radius see Figure 4. Regarding claim 23, at least one of the internal cross-sections of the first and second elements has a radius that is less than or equal to the radius of the cross-section of the first and second items see Figure 4 (column 2, lines 65-70). Regarding claim 25, the first and second elements are identical see Figure 1. Poupitch does not disclose the connecting element permitting the first side of the first element to confront the first side of the second element and the second side of the first element to confront the second side of the second element. Edwards teaches a connecting element that allows the connecting element (58) to permit the first side of the first element to confront the first side of the second element and the second side of the first element to confront the second side of the second element see Figures 1-8. At the time of the invention, it would have been an obvious design choice to modify the connecting element of Poupitch by substituting the connecting element as taught by Edwards to allow the first side of the first element to confront the first side of the second element and the second side of the first element to confront the second side of the second element, since substitution of parts which provide the same function, in this case that of ~~the~~ connecting element, would be within the level of ordinary skill in the art.

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5. Claims 2-5 and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Poupitch in view of Edwards as applied to claims 1 and 12 above, and further in view of Pezzoli et al. (U.S. Patent 5,191,975). The combination of Poupitch and Edwards disclose the claimed invention as rejected in claims 1, 6-12, and 17-25 above; however, the combination does not disclose the first element having a first open end and second element having a second open end, wherein the first and second open ends are flexible (claims 2 and 13), the first and second open ends include a pair of deformable arms (claims 3 and 14), the pair of deformable arms form a portion of a circle and the pair of deformable arms extend more than 180 degrees from one another as measured from the connecting element opposite the open ends (claims 4 and 15), and the pair of deformable arms extend between 190-310 degrees from one another as measured from said connecting element opposite said open ends (claims 5 and 16). Pezzoli et al. teach a first element with a first open end (56) having a first length and a second element having a second open end (56) having a second length, the first and second open ends are flexible see Figure 1 (column 4, lines 5-10). The first and second open ends include a pair of deformable arms (32) see Figure 1. The pair of deformable arms forms a portion of a circle and extends more than 190-310 degrees from one another as measured from the connecting element opposite the open ends see Figure 1. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the first element and second element of the combination of Poupitch and Edwards be a pair of deformable arms as taught by Pezzoli et al. in order

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to have an opening in the first and second elements that would allow a container to be secured and unsecured at will by the user.

6. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Poupitch. Poupitch discloses the claimed invention as rejected in claims 26 and 27 above; however, Poupitch does not disclose the first product being make-up for the lips or eyelashes and the second product being a product that modifies the appearance of the first product. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the first product be make-up for the lips or eyelashes and the second product be a product that modifies the appearance of the first product since Poupitch does not specify what product is to be used with the containers, therefore, one can state that any product desired by the user can be placed in the containers such as eye or lip make-up and eye or lip modifier.

### ***Response to Arguments***

7. Applicant's arguments filed May 19, 2006 have been fully considered. With respect to Applicant's argument to claim 1, they are moot in view of new grounds of rejection.

8. With respect to Applicant's argument that independent claim 26 recites that the first element and second have a first side and a second side, and the connecting element permits the first side of the first element to confront the first side of the second element and the second side of the first element to confront the second side of the

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second element; however, these claim limitations are not found in claim 26, therefore, the original rejection of claims 26 and 27 still stands.

9. Applicant's arguments with respect to claims 1-25 and 28 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rachel A. Running whose telephone number is (571) 272-1917. The examiner can normally be reached on Monday-Friday 7:00 am - 4:00 pm.

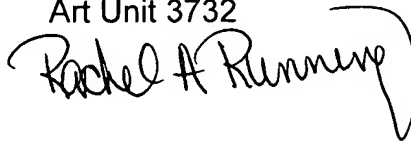


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Rachel A. Running  
Examiner  
Art Unit 3732



  
**PATRICIA BIANCO**  
**PRIMARY EXAMINER**

6/23/04